

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland

**PLANNING COMMISSION OPINION AND
RESOLUTION APPROVING**

FINAL SITE PLAN SP-8648-2020,
KNOWN AS THE FORMER CPSC PROPERTY, FOR A 9.54-ACRE
CITY PARK, ZONED MIXED USE DEVELOPMENT (MXD)

SP-8648-2020

OPINION

Site plan (SP) application SP-8648-2020, regarding property zoned Mixed Use Development (MXD), has come before the Planning Commission for approval. This proceeding constitutes an action pursuant to the City Zoning Ordinance, Chapter 24 of the City of Gaithersburg Code, § 24-170 which permits the Planning Commission to review and approve a site development plan only after making certain findings. This subject case involves a proposed 9.54-acre City park and concerns the development of the subject property ("Property") known as Parcel N290. The Property is located at 10901 Darnestown Road and is bounded by the Westleigh neighborhood to the west and the Washingtonian Woods neighborhood to the north and east.

OPERATIVE FACTS

A. Background

The former Consumer Product Safety Commission (CPSC)/NIKE campus was originally a U.S. Department of Defense (DOD) NIKE-Site (1955-1975) and contained associated support facilities for the nearby NIKE missile site, located approximately one (1) mile away. The CPSC obtained the Property in 1975 and modified the existing buildings to facilitate research and testing. All the existing buildings were renovated and converted to laboratory space when CPSC acquired the Property in 1975. The Property was annexed into the City in 1987 with X-141 and was zoned RP-T (Medium Density Residential).

The City of Gaithersburg Department of Parks, Recreation and Culture began to work with the National Park Service in 2010 to discuss acquiring the 9.54-acre site. Formal declaration of interest in acquiring the Property was issued to the Department of the Interior in summer 2012. The City's application for acquisition was approved later that year with the condition that the area be used as a public park/recreational purposes. A quick claim deed was executed and filed on January 24, 2014.

Prior to the City's acquisition of the Property, numerous buildings and structures were removed that included a helicopter pad, diesel generators, underground oil tanks, Building D, and secure storage.

In 2001, the Maryland Historic Trust conducted a National Register of Historic Places eligibility review for the subject property and determined that the site and existing buildings have no historical significance and therefore are undeserving of historic designation. In 2014, Staff reconfirmed with MHT that the 2001 review was still valid.

On June 30, 2014, the Mayor and City Council held a work session on the future use of the subject property. During that meeting the Council received information on the current conditions of the buildings and significance of the site, and the Council directed Staff to proceed with the demolition of Buildings A, B, C, E, F, G, H and the Gatehouse. Additionally, Council directed staff to preserve Building I, which was built circa 2003.

On December 17, 2014, the HDC determined the seven (7) buildings more than 50 years old lacked architectural and historic significance in accordance with § 24-226 of the City Code and did not request the City Manager withhold issuance of the demolition permit. The seven (7) buildings and the gatehouse were demolished in 2015. Demolition of Building I was completed in 2019.

In June 2015, the Mayor and City Council appointed an ad hoc committee to review the property and make recommendations for its use. The former CPSC Site Planning Ad Hoc Committee consisted of ten (10) residents from Washingtonian Woods, Westleigh, and other neighborhoods in the City. The Committee met eight (8) times from January 2016 through May 2016 with Floura Teeter Landscape Architects, as the City's design contractor, and City Staff to review designs and develop recommendations regarding the proposed site.

On June 8, 2016, the Committee hosted a public meeting on-site to present its findings. On August 1, 2016, three (3) committee members presented recommendations to the public for the park site. The final preferred concept included an entry circle, nature play and tot lot, outdoor amphitheater, open space area, multi-purpose park building, active zone, and community gardens. The preferred park components included: a repurposed warehouse for classes; lounge/meeting spaces; active play for small groups; open space for field sports; walking and jogging trails; fitness areas; a bike trail connected to a wider bike network; nature play areas; community gardens; a playground; outdoor amphitheater and performance space; a shade/picnic structure; and parking. The committee explored plans with and without Building I. All Council members agreed the preferred concept was conceptually a quality plan.

B. Current Application:

On October 10, 2020, the applicant, Sunil Prithviraj of the City of Gaithersburg, submitted an application for final site plan approval, SP-8648-2020. This application seeks approval for the development of a 9.54-acre City park. The plan proposes parking, community gardens, a bicycle skills course, open space, pavilions, a playground, fitness pods, and a welcome plaza. The applicant also submitted final Forest Conservation Plan ENV-8649-2020 and its associated tree removal variance request for the removal of eight (8) trees with a diameter at breast height greater than thirty (30) inches.

The application is based on Sketch Plan SK-8271-2019, approved by the City Council on February 3, 2020, with Resolution R-09-20 and Schematic Development Plan SDP-8275-2019, approved by Council on May 4, 2020, with Resolution R-25-20.

Following City Staff's review, SP-8648-2020 was reviewed by the Planning Commission on December 2, 2020, in conformance with City Code § 24-241 and the Rules of Procedure for the Planning Commission (Rules of Procedure). Notices of the public meeting for the Planning Commission's review of the application were sent to the required properties on November 20, 2020. The Property was physically posted with notification signs at Darnestown Road and Marsh Lane on November 20, 2020, in accordance with City Code § 24-241 and the Rules of Procedure.

At the December 2, 2020, meeting, Alice Storm Jones and Lydia Kimball of Floura Teeter Landscape Architects and Brendan Bishop of Triad Engineering provided testimony. The Planning Commission also evaluated testimony from Deputy City Manager Dennis Enslinger, Director of Parks, Recreation, and Culture Carolyn Muller, Karl Van Neste, Andres Martin, Alan Kaplan, Yon DeShu, David Belgard, and Mary Ellen Culata. The Planning Commission deferred SP-8648-2020 and ENV-8649-2020 until January 6, 2021, and directed Staff to return with a draft resolution of approval.

Relevant Statutory Provisions

The following statutory sections from the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions that define the nature of the Planning Commission's site plan review powers and the extent of the Commission's oversight:

Sec. 24-168. When required.

No building or structure shall be hereafter erected, moved, added to or structurally altered under circumstances which require the issuance of a building permit under this chapter, nor shall any use be established, altered or enlarged under circumstances which require the issuance of a use and occupancy permit under this chapter, upon any land, until a site development plan for the land upon which such building, structure or use is to be erected, moved, added to, altered, established or enlarged has been approved by the city planning commission. This requirement shall not apply to the use of any single-family dwelling for residential purposes.

Notwithstanding the foregoing, no site development plan shall be required to be submitted or approved where the city manager or his designee, upon reviewing an application for use and occupancy permit, is satisfied that the proposed use is a permitted use in the zone and is substantially similar to the use to which the premises were put by the last prior occupant thereof, and the property on which the use is proposed to be located has been the subject of a site development plan approved by the planning commission. A proposed use shall not be deemed substantially similar to a prior use where this chapter imposes more stringent requirements for the proposed new use as to off-street parking, yards, height limits or minimum lot size. Notwithstanding the foregoing, no site

development plan shall be required to be submitted or approved where the city manager or his designee, upon reviewing an application for a building permit for changes in an existing building, is satisfied that the proposed changes in the building will not increase the exterior dimensions of the building or substantially increase the usable space within the building.”

* * *

Sec. 24-170. General conditions.

“The City Planning Commission shall approve the site development plan only upon a finding that the buildings, structures, and uses proposed will not:

- (a) Adversely affect the health or safety of persons residing in or working on the land in question or in the neighborhood thereof.
- (b) Be detrimental to the public welfare or adversely affect the use or development of adjacent properties.
- (c) Constitute a violation of any provisions of this chapter or any other applicable law, regulation, or ordinance.
- (d) Be incompatible or inharmonious with other existing uses or with existing and proposed adjacent development.”

* * *

Sec. 24-171. Site plan review.

“In the review and approval of a site development plan, the Planning Commission shall have the following powers which shall be exercised for the purpose of avoiding adverse impact on the neighboring properties and public facilities, reducing traffic hazards, and improving traffic circulation within or without the property which is the subject of the plan, preserving existing desirable natural features, assuring adequate light and air to buildings within or without the subject property, providing adequate access to such buildings by fire and rescue equipment, providing convenient access to such buildings from off-street parking spaces, avoiding overcrowding of persons and buildings within the development, ensuring the provision or development of recreational and other amenities and facilitating the creation and maintenance of common or public open space, parking areas and private drainage systems.

- (a) To determine the location, size and shape of buildings;
- (b) To determine the location, design and dimensions of streets, driveways and parking areas;
- (c) To require parking facilities in addition to the minimum number of parking spaces otherwise required by this chapter;
- (d) to determine the maximum number of dwelling units to be located within any one building;
- (e) To determine the location of common open space;
- (f) To establish the finished grade of the property;

- (g) To establish minimum materials and design standards for private streets, driveways, parking area and drainage systems, where such standards have not been established by ordinance;
- (h) To require screen planting or fencing;
- (i) To impose other conditions upon the approval of the plan where necessary to assure the use of the property will be consistent with the purpose and intent of this chapter;
- (j) To determine whether the site development plan will achieve a maximum of compatibility, safety and efficiency, considering but not limited to the following functions: Height, building design, arrangement and scale of development; vehicular circulation system, including access and off-street parking and loading; environmental impact, landscaping, screening, buffering, open space, lighting, signage and pedestrian circulation. The fact that a site plan complies with all of the stated general regulations, development standards or other requirements of the zone shall not, by itself, be deemed to create a presumption that the proposed site development plan is, in fact compatible with adjacent land uses and development and, in itself, shall not be sufficient to require approval of the site plan;
- (k) To require that, as a condition to the issuance of building and/or site work permits, bonds or other financial security or instrument be posted with the city, satisfactory to the city manager or designee, to ensure the construction and/or maintenance of approved on-site, private recreational facilities, amenities, buildings and areas, and any landscaping, screening, access and parking elements being part of the approved site plan; and
- (l) To require that property be subdivided, resubdivided or replatted and in connection therewith, require dedication of portions of the land to public use, subject to site plan review for public improvements reasonably related to serving the residents, workers, patrons or visitors of the property or to impose a fee for the same in lieu of dedication"

C. Evaluation and Findings

The Planning Commission, upon careful review of the evidence of record, agrees with the findings, conclusions, and the recommendation of approval by City Staff for Final Site Plan SP-8648-2020 and finds the application and development proposal meets or accomplishes the purposes, objectives, and minimum standards and requirements of the MXD Zone that are set forth in Chapter 24 (Zoning) Article III, Division 19 of the City Code.

Further, the Planning Commission exercises its authority in the review and approval of the site development plan for the purpose of avoiding adverse impact on the neighboring properties and public facilities; reducing traffic hazards and improving traffic circulation within or without the Property; preserving existing desirable natural features; protecting environmental resources; assuring adequate light and air to buildings within or without the Property; providing adequate access to such buildings by fire and rescue equipment; providing convenient access to such buildings from off-street parking spaces; avoiding overcrowding of persons and buildings within the development; ensuring the provision or development of recreational and other amenities; and facilitating the creation and

maintenance of common or public open space, parking areas and private drainage systems, all as set forth in § 24-171. The Planning Commission finds that the final site plan application satisfies all of these purposes.

Furthermore, the Planning Commission finds that the application meets the submission requirements set forth in Chapter 24 (Zoning), Article V, § 24-169, and meets the standards and requirements for approval of the subject final site plan, as set forth in § 24-170 and explained below:

- (a) The buildings, structures, and uses proposed will not adversely affect the health or safety of persons residing in or working on the land in question or in the neighborhood thereof:

The park will include parking, community gardens, a bicycle skills course, open space, pavilions, a playground, fitness pods, and a welcome plaza. All installed structures and play and exercise equipment will meet building and safety code requirements.

The 60-space parking lot will accommodate vehicular parking on-site, including during large events. The parking lot will be lit to accommodate occasional nighttime events even though the park is scheduled to be open from dawn until dusk. According to the photometric plan, no parking lot lighting will spill over to adjacent residential properties. The driveway from Darnestown Road to the lot will include curbing to separate it from the adjoining shared use path in order to deter accidents.

The existing security fencing along the park's boundary will be retained and repaired if necessary, and the unsightly barbed wire will be removed. Much of the plantings along the fence will be retained, and additional screening will be planted.

Overall, the Planning Commission finds that the development is consistent and in keeping with the recommendations of the Master Plan; provides the necessary on-site parking; and provides adequate perimeter screening.

- (b) The buildings, structures, and uses proposed will not be detrimental to the public welfare or adversely affect the use or development of adjacent or surrounding properties:

In accordance with the 2009 Transportation Element of the Master Plan, the new pedestrian pathways promote connectivity within the existing transportation network by providing a new pedestrian pathway interconnected with existing State and City right-of-way. The City's Marsh Lane pedestrian connection will be an improvement as the plan activates an existing dead end street.

The Marsh Lane connection also encourages the sharing of access points between adjacent properties and creates new pedestrian connections by enhancing connectivity between an existing residential community and the new park by leveraging existing public right-of-way.

The Marsh Lane connection to the Washingtonian Woods neighborhood encourages and promotes the City as a multi-modal community and reduces the dependence upon vehicles by providing auto alternatives. The plan also includes bicycle parking and is located conveniently at an existing Ride-On bus stop near the park's Darnestown Road entrance. This bus stop offers park patrons the opportunity to utilize mass transit.

The proposed plan meets all five (5) goals listed in the Parks, Recreation & Culture Element of the 2018 Master Plan. It preserves and expands opportunities for "Green Spaces" by retaining the majority of the open areas. It develops bicycle and pedestrian connectivity with the adjoining residential communities through the development of trail systems and the construction of the shared-use paths at the Darnestown Road and Marsh Lane entrances. It promotes health and wellness for all ages and abilities with its various amenities such as the play equipment, trail network, and fitness pods. The park utilizes sustainable practices in the preservation and acquisition of park land by retaining much of the existing tree canopy coverage, the planting of additional vegetation, the on-site stormwater treatment, and, retention of much of the existing open space, including its natural topography.

Overall, the Planning Commission finds that the development proposed is consistent with the nature and intensity of surrounding developments, has sufficient parking and landscaping, and will not adversely affect the use or development of adjacent surrounding properties.

(c) The buildings, structures, and uses proposed will not constitute a violation of any provisions of this chapter or any other applicable law, regulation or ordinance:

The Planning Commission finds the development will further the goals of the adopted 2009 Transportation Element of the Master Plan, the new pedestrian pathways promote connectivity within the existing transportation network by providing a new pedestrian pathway interconnected with existing State and City right-of-way. The Planning Commission also finds that the application meets the 2018 Parks, Recreation & Culture Element of the Master Plan that called for developing the Property while preserving the site as passive parkland and enhancing the environment for current residents of the site.

The Planning Commission, based on the evidence from the exhibits and the record, City Staff's recommendation and review of the subject application, finds that the application meets the submission requirements set forth in City Code § 24-169, and meets the standards and requirements for approval of the subject final site plan, as set forth in City Code § 24-170.

The Applicant seeks a variance for the removal of eight (8) specimen trees as part of ENV-8649-2020. Most of the trees are in fair or poor condition and removal is necessary to complete the design approved as part of the Schematic Development Plan, SDP-8275-2019.

A final forest conservation plan will be approved as part of this resolution by the Planning Commission pursuant to Chapter 22 of the City of Gaithersburg Code. The project requires 1.21-acres of afforestation and the proposed landscaping will total 1.33 acres. Based on the Staff recommendation by the City's environmental planner, the Planning Commission evaluated the submitted final forest conservation plan (Exhibit 3) and found it to be in compliance with the City Code.

The Commission agrees with the Staff Report that adequate public facilities are in place, in accordance with § 24-244 of the City Code, to support the development and the applicant has committed to providing the necessary transportation and pedestrian enhancements.

- (d) The buildings, structures, and uses proposed will not be incompatible or inharmonious with other existing uses or with existing and proposed adjacent development:

The proposed park provides open space and recreational opportunities for the residents of the Washingtonian Woods and Westleigh neighborhoods and is compatible and harmonious with the existing adjacent residential uses.

The park will be accessible from two (2) points: Marsh Lane and Darnestown Road. The 60-space parking lot also provides visitors with the option to drive to the park. The 60-space parking lot will accommodate vehicular parking on-site, including during large events. The parking lot will be lit to accommodate occasional nighttime events even though the park is scheduled to be open from dawn until dusk. According to the photometric plan, no parking lot lighting will spill over to adjacent residential properties.

The existing, approximately six (6)-foot tall chain-link fencing installed by the federal government will remain along the perimeter of the Property. The fencing will be painted, and the barbed wire on top will be removed to improve its aesthetics. The existing landscaping will be maintained and enhanced to provide a visual barrier. The main park amenities will be located away from the perimeter to provide property owners with privacy.

Micro bio-retention areas and bio-swales will collect rainwater on the site. All storm water that flows along the entry driveway will be captured at an outlet at Darnestown Road. The stormwater areas will satisfactorily collect the water and improve its quality before it is conveyed off site.

The Planning Commission is satisfied that the site plan is compatible and harmonious with the surrounding area properties. The siting and interrelationship of the park's amenities achieve this harmonious and compatible character.

- (e) The buildings, structures, and uses proposed will not be inharmonious or inconsistent with the environmental standards of the City as adopted by the City Council pursuant to § 20-9 of the City Code and any amendment thereto:

An approved Natural Resources Inventory (NRI) and Forest Stand Delineation (FSD) report, designated as ENV-7684-2017, was approved prior to submission of Sketch Plan SK-8271-2019. The NRI/FSD report noted that the vegetation existing on site was predominantly non-native invasive and native pioneer species such as fast growing, short-lived species that are typically the first to grow at an abandoned or disturbed site- typically lower value trees. The NRI (ENV-7684-2017) is included as Exhibit 4. In addition, the NRI found that the primary land cover at this site is maintained lawn. Currently the landscaping on site reflects a now outdated approach to landscaping, providing neat appearance with little additional environmental benefits.

The project requires 1.21-acres of afforestation. The proposed landscaping will total 1.33 acres. In addition, there are various proposed tree save areas. The canopy coverage of the landscaping and tree save areas far exceed the planting requirement. Landscape improvements are planned throughout the site with tree, shrub, and herbaceous planting. The proposed planting schedule ranges in aesthetic quality and contribution to the ecology of the site. Many trees line the border of the park site allowing for adequate screening to private properties adjacent to the park. In addition, proposed plantings line the pathway creating an enjoyable shaded experience for the park user.

The Applicant seeks a variance for the removal of eight (8) specimen trees as part of ENV-8649-2020. The Planning Commission concurs with the applicant's findings in that the variance is necessary to achieve the goals of the project and that the enforcement of a prohibition of removing the eight (8) specimen trees would mean reducing the development program, which would deprive the applicant of the rights commonly enjoyed by others who are in similar areas that have many of the same features as the Property. The tree removal variance will not confer on the applicant a special privilege that would be denied for other applicants for the development of this property, nor did the surrounding land or building uses have any inherent characteristics that have created this particular need for a variance; and that approval of the tree removal variance will not violate state water quality standards or cause measurable degradation in the water quality, and that the applicant has met all requirements for the variance under § 22-12 of the City Code.

Overall, the Planning Commission finds that the site plan, as presented, will not be inconsistent or inharmonious with the City's environmental standards as adopted by the City Council.

Conclusion

The Planning Commission agrees with the findings and recommendations contained in the City Staff Report and finds that the application does not violate any provision of Chapter 24 of the City Zoning Ordinance or any other law or ordinance. Additionally, the Planning Commission, in their review of application, supports and grants approval of a tree removal variance to remove eight (8) specimen trees.

Upon consideration of all the evidence of final site plan SP-8648-2020, the Planning

Commission concludes that said plan, as conditioned, is in conformance with Zoning Ordinance § 24-170, and that the applicant has met its burden of proof for approval of the final site plan application.

FINAL SITE PLAN SP-8648-2020

RESOLUTION

WHEREAS, the Planning Commission conducted a public meeting on application SP-8649-2020, including the Tree Removal Variance and final forest conservation plan, on December 2, 2020;

WHEREAS, the Planning Commission based on the exhibits submitted, the applicant's testimony, and the Staff Report, findings and recommendation finds that Final Site Plan SP-8648-2020 is in compliance with §§ 24-170 and 24-171 of the City Code;

WHEREAS, the applicant, Sunil Prithviraj of the City of Gaithersburg, in accordance with § 22-12(b) submitted a final Forest Conservation Plan and Tree Removal Variance Request letter (Exhibit 3), discussing and displaying the subject trees requested to be removed and the evidence for requirements and criteria for granting the request in compliance in § 22-12 as part a development plan, known as Final Site Plan Application SP-8648-2020;

WHEREAS, the Planning Commission find, from the evidence submitted and the staff recommendation, that the enforcement of a prohibition of removing the eight (8) specimen trees would mean reducing the development program, which would deprive the applicant of the rights commonly enjoyed by others who are in similar areas that have many of the same features as the Property;

WHEREAS, the Planning Commission find that approval of the Tree Removal Variance will not confer on the applicant a special privilege that would be denied for other applicants for the development of this property, nor did the surrounding land or building uses have any inherent characteristics that have created this particular need for a variance; and

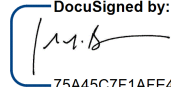
WHEREAS, the Planning Commission find that approval of the Tree Removal Variance will not violate state water quality standards or cause measurable degradation in the water quality, and that the applicant has met all requirements for the variance under § 22-12 of the City Code;

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Gaithersburg on the 6th day of January, 2021, that the Applicant's proposed Final Site Plan, designated SP-8648-2020, requested Tree Removal Variance, and final forest conservation plan, designed ENV-8649-2020, be APPROVED with one (1) condition:

1. Staff's minor comments on Forest Conservation Plan to be addressed prior to the issuance of any permits.

ADOPTED by the Planning Commission of Gaithersburg, Maryland, this 6th day of January 2021. Commissioners Bauer, Hopkins, Kaufman, Wessell, and Winborne being present and voting in favor of the action.

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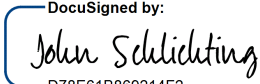


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John Bauer, Chair
Planning Commission

This is to certify that the foregoing Resolution was adopted by the Gaithersburg Planning Commission in public meeting assembled on the 6th day of January, 2021.

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John Schlichting, Director
Planning and Code Administration